

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

LARRY FLOYD, JR.,

Plaintiff,

v.

NO. 4:92CV270-S

FRED CHILDS, et al.,

Defendants.

OPINION

This cause is before the court on plaintiff's motion for partial summary judgment against Terry Winters, Ryan Graves, Donald Radford, Bobby Jolly, David Johns, Roger Little, and Porter Wilkinson. The basis of plaintiff's motion is the doctrine of collateral estoppel, invoked in this instance because each of these defendants either pled guilty to or was convicted of various federal criminal charges arising from the beating of plaintiff after his recapture. Two defendants--Winters and Graves--are in default, having failed to answer or otherwise to plead; they will not be discussed further. Three of the defendants--Radford, Johns, and Jolly--have not responded to the instant motion while the remaining two defendants--Little and Wilkinson--have filed identical responses (with no supporting memoranda). In those documents, these latter two defendants maintain, without argument or explanation, (1) that this action is barred by three different state statutes of limitations, (2) that the court lacks

jurisdiction to entertain a private cause of action under § 1983, and (3) that collateral estoppel is inapplicable since the instant parties and issues are not the same as in the criminal case, no privity exists between plaintiff and the United States, and "no allegation or showing" has been made that either Little or Wilkinson "damaged or injured the Plaintiff to any compensable degree."

Before the court begins its discussion, a recitation of the pertinent course of events in the criminal case is necessary:

(1) Defendant Donald Radford pled guilty to a one-count information that he "did willfully aid and abet concealment of the assaults on inmate Larry Floyd...by failing to include the assaults in his official After-Action Escape Report, and did thereby deprive" plaintiff of his Eighth Amendment rights in violation of 18 U.S.C. §§ 2 and 242.

(2) Defendant David Johns was convicted of influencing and impeding the due administration of justice by attempting to influence a grand jury witness in violation of 18 U.S.C. § 1503.

(3) Defendant Bobby Jolly pled guilty to a one-count information that he aided and abetted the violation of plaintiff's Eighth Amendment rights by "willfully kick[ing]" him in violation of 18 U.S.C. §§ 2 and 242.

(4) Defendant Porter Wilkinson pled guilty to a one-count information that he aided and abetted the violation of plaintiff's Eighth Amendment rights by "willfully assault[ing]" him "in the face, resulting in bodily injury..." in violation of 18 U.S.C. §§ 2 and 242.

(5) Defendant Roger Little pled guilty to Count One of the indictment that he "did willfully assault, by kicking, inmate Larry Floyd, who was restrained and not resisting and not a threat to anyone, resulting in bodily injury...including physical pain, and did thereby

willfully deprive" plaintiff of his Eighth Amendment rights in violation of 18 U.S.C. § 242.

DISCUSSION

I.

The court begins with the responses of Little and Wilkinson, which, as noted, do nothing more than outline their positions. Although the court suspects the basis upon which these defendants invoke the statutes of limitations defense (having recently dealt with a relation back question in this case), the court will not fashion their argument for them. As to the contention that this court lacks jurisdiction to entertain this action, the court would direct the attention of these defendants to 28 U.S.C. § 1331, which grants this court original jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." Section 1983 clearly falls within this jurisdictional grant.

Turning finally to the issue of collateral estoppel, the court believes that as they relate to Little and Wilkinson, all three factors undergirding collateral estoppel are present; that is,

(1) the issues to be precluded are identical to the ones involved in the prior litigation involving these defendants;

(2) the issues were actually litigated and determined adversely to these defendants in the prior litigation; and

(3) the determination of those issues was a critical and necessary part of the judgments in the prior litigation.

Saucier v. United States Fidelity and Guaranty Co., 765 F. Supp. 334, 337 (S.D. Miss. 1991). Furthermore, the effects of collateral estoppel are not diminished by the fact that the criminal convictions of Little and Wilkinson were brought about by guilty pleas. United States v. Shaw, 725 F. Supp. 896, 898 (S.D. Miss. 1989). Under these circumstances, Little and Wilkinson are collaterally estopped from arguing that they did not willfully assault plaintiff, thereby causing him injury in violation of his Eighth Amendment rights. Plaintiff's motion for partial summary judgment on Counts One (Eighth Amendment violation) and Four (state law assault and battery) is therefore granted as to Little and Wilkinson.

As to the remaining three defendants involved in the instant motion--Radford, Johns, and Jolly--the court begins with the following proposition: although this court cannot grant summary judgment by default, i.e., simply because there is no opposition to the motion, Hibernia National Bank v. Administracion Central Sociedad Anonima, 776 F.2d 1277, 1279 (5th Cir. 1985), it may accept as undisputed the movant's version of the facts and grant the motion where the movant has made a prima facie showing of his entitlement to summary judgment. Eversley v. Mbank Dallas, 843 F.2d 172, 174 (5th Cir. 1988).

Turning to Jolly first, the court believes that plaintiff has made a prima facie showing of his entitlement to partial summary

judgment on Counts One and Four based on collateral estoppel. Like Little and Wilkinson, Jolly pled guilty to willfully depriving plaintiff of his Eighth Amendment rights by kicking him. In that situation, Jolly is collaterally estopped from arguing otherwise.

As to Radford, the court believes that he likewise is collaterally estopped from arguing that he did not willfully aid and abet the concealment of the assault. The same applies to Johns, who was convicted of attempting to influence a grand jury witness, thereby impeding the due administration of justice. These findings do not, however, entitle plaintiff to partial summary judgment as to Count Three, the conspiracy count. The court has uncovered no authority for the proposition that participation in a cover-up without some kind of collateral consequence, such as denial of due process or access to the courts, can form the basis of a constitutional violation. See, e.g., Sanders v. English, 950 F.2d 1152, 1163 (5th Cir. 1992) (deliberately concealing or failing to disclose exculpatory evidence resulting in malicious prosecution violates due process); Landrigan v. City of Warwick, 628 F.2d 736, 744-45 (1st Cir. 1980) (mere filing of false police reports, "by themselves and without more," did not create § 1983 cause of action). Indeed, plaintiff seems to acknowledge this interpretation of the law and has fine-tuned his argument so as to include the "acts and omissions of the defendants in connection with a cover-up [as part of the] overt acts of the conspiracy to

assault Floyd." Plaintiff may be able to make that showing at trial; however, the court is not willing at this stage to make that leap. Therefore, although Radford and Johns are collaterally estopped from arguing that they did not participate in the after assault cover-up, plaintiff is not entitled to partial summary judgment against either Radford or Johns on Count Three.

An appropriate order shall issue.

This _____ day of May, 1996.

CHIEF JUDGE